

J1

IN THE CONSTITUTIONAL COURT
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)



IN THE MATTER OF: THE ASSENT OF THE ZAMBIA CORRECTIONAL
SERVICE BILL NO. 35 OF 2021 BY THE PRESIDENT

AND

IN THE MATTER OF: ARTICLE 128 OF THE CONSTITUTION

AND

IN THE MATTER OF: THE CONTRAVENTION OF ARTICLES 61, 62, 63, 81
AND 92 OF THE CONSTITUTION OF ZAMBIA

BETWEEN:

CHAPTER ONE FOUNDATION LIMITED

PETITIONER

AND

THE ATTORNEY GENERAL

RESPONDENT

CORAM: Chibomba, PC, Mulenga, Munalula, Musaluke, Mulongoti, JJC.
On 18th January, 2022 and on 25th February, 2022

For the Petitioner: Mr. M. Nkunika, Simeza Sangwa & Associates

For the Respondent: Mr. M. Muchende, SC, Solicitor General
Mr. P. Shambulo, Principal State Advocate
Attorney General's Chambers

JUDGMENT

Mulenga, JC delivered the Judgment of the Court.

Cases cited:

1. Daniel Pule and 3 Others v The Attorney General CCZ Selected Judgment No. 60 of 2018

2. Law Association of Zambia v The Attorney General (2008) 1 Z.R. 21
3. The Attorney General v Chishimba Kambwili SCZ/8/15/20
4. La Abra Silver Mining Company v United States (1899) 175 U.S. 423
5. Edwards v United States (1932) 286 U.S. 482
6. The Attorney General for Western Australia & Another v Laurence Bernhard Marquet [2003] HCA 67

Legislation referred to:

1. The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Acts of Parliament Act Chapter 3 of the Laws of Zambia

Other works referred to-

1. Francis Bennion Statutory Interpretation (1992) 2nd Edition London:Butterworths
2. Seth Barrett Tillman 'Noncontemporaneous law making: Can the 110th Senate enact a bill passed by the 109th house? (2006) 16 Cornell Journal of Law and Public Policy 342

INTRODUCTION

[1] The Petitioner, Chapter One Foundation Limited, filed a Petition on 10th June, 2021 seeking the following reliefs:

1. **A declaration that to the extent that the Zambia Correctional Service Bill No. 35 of 2021, was assented to by the President after the dissolution of Parliament on 13th May, 2021, the Zambia Correctional Service Act No. 37 of 2021 is not law or legislation enacted by the Parliament of the Republic of Zambia and therefore null and void.**
2. **An order (of Certiorari) that the Zambia Correctional Service Act No. 37 of 2021, be removed forthwith into the Constitutional Court for purposes of quashing.**

PETITIONER'S CASE

[2] The Petition states that the legislative authority of the Republic is derived from the people of Zambia and must be exercised in a manner that protects the Constitution and promotes the democratic governance of the Republic. Article 62

creates Parliament which consists of the President and the National Assembly and the legislative authority is exercised by Parliament. In addition, the President, apart from being part of Parliament, is also the head of State and Government in whom the executive authority is vested. It was posited that the legislative function of the National Assembly is to pass bills and the President is to assent to the Bills during the life of Parliament. Further, that the term of Parliament is five years commencing from the date members of the National Assembly are sworn into office after the general election and ending on the date that Parliament is dissolved. That after the dissolution of Parliament, the President ceases to be part of Parliament and the President can therefore, only perform executive functions until the President-elect assumes the office of President pursuant to Article 104. That Article 92 outlines the executive functions of the President.

[3] The Petition adds that on 14th April, 2021 the Zambia Correctional Service Bill No. 35 of 2021 was published and passed on a date unknown. The President assented to the Bill on 19th May, 2021, six (6) days after the dissolution of Parliament. The Bill was then later published as the Zambia Correctional Service Act No. 37 of 2021. It was added that the President breached Articles 81(8) and 92(2) when he purported

to assent to the Zambia Correctional Service Bill after the dissolution of Parliament. That this is based on the fact that the legislative authority conferred by Article 63(1) to assent to Bills had expired upon the dissolution of Parliament and the executive functions to be performed upon dissolution, as outlined in Article 92, do not include the power to assent to Bills passed by the National Assembly. Hence, the reliefs sought.

[4] The affidavit verifying facts was deposed by Mr. John Sangwa, SC, as the advocate for the Petitioner who stated that the contents of the Petition were true to the best of his knowledge and belief.

[5] The Petitioner's arguments in support of the Petition essentially reiterated the facts outlined in the Petition. It was submitted that once Parliament is dissolved, the President only continues to perform executive functions as provided by Article 81 (8) of the Constitution. Therefore, that the assent to the Zambia Correctional Service Bill on 19th May, 2021, six (6) days after the dissolution of Parliament, was done in breach of Articles 1, 104, 81(8) and 92(2) of the Constitution.

[6] At the hearing, Counsel for the Petitioner, Mr. M. Nkunika, augmented the Petitioner's skeleton arguments and submitted

that the question raised is whether a legislative function may be performed and exercised after the dissolution of Parliament. That to answer this question, the starting point is Article 61 which provides that legislative authority is derived from the people of Zambia and must be exercised in a manner that protects the Constitution and promotes the democratic governance of the country. Further, that in interpreting the Constitution, this Court should do it in a way that advances the constitutional provisions.

[7] Mr. Nkunya reiterated that legislative authority is vested in Parliament as per Article 62(1) and (2) and that Parliament comprises of the President and the National Assembly. That a simple interpretation is that if either the National Assembly or the President is not present or available for whatever reason, the legislative function cannot be performed. That this position is also in line with Article 63(1) which requires the President and the National Assembly to work together and therefore they must both be present. Therefore, that the President's assent to the Zambia Correctional Service Bill No. 35 of 2021 after the dissolution of Parliament on 13th May, 2021 contravened Articles 62, 63 and 81 of the Constitution.

[8] Mr. Nkunika posited that the Respondent's submission, that there are provisions in the Constitution that allow the President to hold office and by virtue of the same, the President may have acted within the confines of the Constitution, cannot hold. That this is based on the fact that Article 91 loosely makes the President a Member of Parliament as well as head of State and by virtue of Article 92 as read together with Article 104, the President is able to exercise executive functions after the dissolution of Parliament. However, that the President cannot exercise legislative powers under Article 62 and therefore contravened the cited constitutional provisions.

RESPONDENT'S CASE

[9] The Respondent filed an Answer on 22nd July, 2021 in which it stated that the facts as outlined in the Petition were essentially not in dispute. It was further stated that Article 66(1)(a) and (b) of the Constitution mandates the President to assent to a Bill presented before him within 21 days after receipt of the Bill. Further, that in the case where the President does not assent to the Bill within the prescribed period, the Bill shall be considered to have been assented to. That in the alternative, the President may refer the Bill to the National

Assembly for reconsideration indicating any reservations he may have concerning the Bill.

[10] It was the Respondent's position that the President assented to the Bill within the prescribed period even though Parliament was dissolved at the time. The Respondent stated that the President did not contravene Articles 81(8) and 92(2) as alleged. That where Parliament is dissolved, the President as head of the executive is mandated, until the President-elect assumes office, to continue to perform executive functions. Further, that pursuant to Article 92(2)(h) one of the other functions as specified by the Constitution itself and the Acts of Parliament Act Chapter 3 of the Laws of Zambia, is the assent to Bills. It was concluded that the Petitioner is not entitled to the reliefs prayed for or at all.

[11] The affidavit in support of the Answer was deposed by Mr. Josiah Simachela, the Chief State Advocate, who reiterated the contents of the Answer. It was averred that the President assented to the Bill within the prescribed time even though Parliament was dissolved at the time. That where the Bill is not assented to within the stipulated period it shall be considered assented by operation of law unless where it is referred by the President, to National Assembly with reservations, for reconsideration.

[12] In the skeleton arguments filed on 10th August, 2021, the Respondent recited the provisions of Articles 5, 61, 62, 63, 66, 81, 104 and 92 of the Constitution and stated that what is in issue is constitutional interpretation of the various provisions relating to the enactment of legislation. It was submitted that in the interpretation of the Constitution, it is settled that words should be given the literal meaning, that is, their natural and ordinary meaning. That it is only when the literal interpretation gives rise to an absurdity that the purposive approach should be resorted to. The case of **Daniel Pule and 3 Others v The Attorney General**¹ was cited in support of this proposition on the literal rule and purposive approach to interpreting constitutional provisions. Further, that all provisions bearing on the subject of interpretation must be considered together in order to give effect to the objective of the Constitution.

[13] The Respondent contended that while a literal reading of Article 63 which vests legislative power in Parliament, consisting of the President and the National Assembly, and Article 81 which provides for the term and dissolution of Parliament seem to suggest that legislative authority can only be exercised during the life time of Parliament, Article 66 provides time frames within which a Bill ought to be assented

to. That Article 66 does not expressly state that the assent has to be done during the subsistence of Parliament in the strict sense, hence creating an absurdity.

[14] It was submitted that the process of enactment of legislation is two-fold; namely the passing of the Bill by the National Assembly and assenting to the Bill by the President. That the passing of a Bill by the National Assembly cannot be done after the dissolution of Parliament whereas the assent to a Bill can be done even after dissolution provided it is done within 21 days of receipt of the Bill. That the computation of the 21 days is not tied to the life cycle of Parliament per se but is a check on the presidency to ensure timeous enactment of legislation. Hence, the further provision that if the President does not act within the mandatory period the Bill is deemed enacted upon expiry of the said period. However, that when the President opts to refer the Bill to the National Assembly within the mandatory period in accordance with Article 66 (1) (b) at the time when Parliament is dissolved such a Bill could only be deliberated upon in the next session of Parliament.

[15] As regards the continued performance of executive functions by the President after the dissolution of Parliament pursuant to Article 81, the Respondent argued that Article 92(2)(j) provides that those functions include other functions

specified in the Constitution and the Acts of Parliament Act chapter 3 of the Laws of Zambia. It was added that Article 274 provides that a function conferred in the Constitution may be performed as occasion requires and that this supports the assent to the Bill by the President after the dissolution of Parliament.

[16] The Respondent submitted that the Petition should be dismissed because the power to assent to a Bill passed by the National Assembly can still be exercised in accordance with Articles 66(1)(a) and 92(2)(j) even when Parliament is dissolved. Further, that the President did not breach Articles 81(8) and 92(2) as the President is mandated to continue to performing executive functions save for the power to make an appointment or dissolve the National Assembly in accordance with Article 104 of the Constitution. Furthermore, that pursuant to Article 92(2)(j) the President is mandated to perform other functions specified in the Constitution and the Acts of Parliament Act.

[17] It was the Respondent's prayer that this Court should not issue a conservatory order staying the operation of the Zambia Correctional Service Act No. 37 of 2021 but that it should grant a declaration that the Zambia Correctional Service Act No. 37 of 2021 is law enacted by Parliament because the President is

mandated to assent to Bills even after Parliament is dissolved. That the Petition should be dismissed with costs.

[18] In augmenting the Respondent's skeleton arguments, the learned Solicitor General, Mr. Muchende, SC, submitted that the doctrine of mootness and academic futility dictates against determining the matter in favour of the Petitioner because even assuming that the Petitioner was correct, which position is denied, a judgment in their favour would not serve any useful purpose because the impugned Act would nevertheless stand owing to Article 66 (6) which provides that the Bill would be deemed to have been assented to, after the expiration of the prescribed time within which the President ought to have assented to it. In support of the doctrine of mootness and academic futility the cases of **Law Association of Zambia v The Attorney General**² and **The Attorney General v Chishimba Kambwili**³ were cited.

[19] Mr. Muchende, SC, further argued that under Article 62, the discharge of legislative functions does not require the President and the National Assembly to work at the same time and place through Article 66 of the Constitution. The two do not perform the functions simultaneously. However, it is the combined effect of the National Assembly passing Bills and the executive functions of the President assenting to the Bills that

culminates in a complete legislative function and process of Parliament. That whereas the assenting to Bills is not explicitly mentioned under Article 92(2), Article 92(2)(j) as read with Articles 63 and 66 covers the same executive function.

[20] It was added that the President can assent to a Bill even after dissolution of Parliament so long as the Bill was passed during the subsistence of the term of the National Assembly. This is due to the fact that when Parliament is dissolved under Article 81(3) and (4) the President nevertheless continues to perform the executive functions under Article 104 based on the import of Article 81(8). That Article 104 only bars the President from making appointments and dissolving National Assembly but does not stop him from assenting to Bills passed during the life of the dissolved National Assembly. Hence, that there was nothing wrong with the President assenting to the Bill after the dissolution of Parliament.

PETITIONER'S REPLY

[21] In the oral submissions in reply, counsel for the Petitioner, Mr. Nkunika argued that the Learned Solicitor General in addressing the issue of mootness and academic futility only cited Article 66(6) but did not make reference to clauses (1) to (4). That Article 66 as a whole gives the process that is

undertaken for a Bill to become an Act and clause (4) speaks to a situation where the President does not assent to a Bill but refers it back to the National Assembly. That this particular situation was not addressed by the Respondent in addressing Article 66 on mootness and academic futility with regard to the case of **Law Association of Zambia v The Attorney General**² cited by the Respondent. Mr. Nkunika argued that the same dealt with instances where interim relief is sought but which was not the case in *casu*. It was his submission that he had not had sight of the Ruling of the single Judge of the Supreme Court in the case of **The Attorney General v Chishimba Kambwili**³ cited by the Respondent, but that in any event the Supreme Court decisions are not binding on this Court.

[22] Counsel further submitted that there was nowhere in the Constitution including in Article 62 which states that assenting to a Bill by the President is an administrative function. That instead Article 63 categorically states that the assenting to a Bill is a legislative function. In addressing Article 92(2)(j) which states that the President may perform other functions specified by the Constitution or as prescribed, Mr. Nkunika argued that the word prescribed has been defined to mean according to the Act of Parliament and that the only functions that may be performed by the President are executive functions that do not

touch on the legislative function as envisaged by Articles 62 and 63 of the Constitution. He reiterated that the Petitioner's prayer be granted.

CONSIDERATION AND DECISION

[23] We have considered the Petition, Answer, affidavits, skeleton arguments and *viva voce* submissions by the respective parties. The Petitioner challenges the constitutionality of the presidential assent to the *Zambian Correctional Service Bill No. 35 of 2021* on 19th May, 2021 six (6) days post-dissolution of Parliament.

[24] The Petitioner's position is that when Parliament was dissolved on 13th May, 2021 the President's legislative functions came to an end, and he was only to perform executive functions in line with Article 81(8) and Article 92(2) of the Constitution. That this is premised on the fact that legislative authority is vested in Parliament as a collective and presupposes the existence of both the National Assembly and the President at the same time. Therefore, in so far as the Bill was assented to by the President after dissolution of Parliament, the *Zambian Correctional Service Act No. 37 of 2021* is not law enacted by Parliament and hence null and void. Further, that the assent was in breach of Articles 62, 63 and 81 of the Constitution.

[25] The Respondent on the other hand, admits that the literal reading of Articles 63 and 81 of the Constitution suggest that legislative authority can only be exercised during the lifetime of Parliament. However, that a wholesome appreciation of all provisions touching on enactment of legislation suggests otherwise. In particular, that there is no express requirement for the assent to be effected during the subsistence of Parliament in Article 66. That this is fortified by Article 274, which provides for functions to be performed as occasion requires, and Article 92 (2)(j) which enjoins the President to perform other functions specified in the Constitution.

[26] It is the Respondent's position that the two different positions found in the Constitution amount to an absurdity which this Court should resolve by holding that while passing of a Bill by the National Assembly cannot be done after the dissolution of Parliament, assent to the Bill can be so done provided it is done within the timeframe given in Article 66. That a reading of Article 66(6) indicates that it was immaterial that the assent was done post-dissolution of Parliament seeing as at the expiration of twenty-one (21) days, the Bill was still going to become law by operation of law.

[27] Further, that the President and the National Assembly are not mandated to perform their conjunctive legislative functions

simultaneously and therefore the President can assent to a Bill post dissolution. That Article 104 of the Constitution buttresses this position in that it only prohibits two functions, that of making appointments and dissolution of Parliament.

[28] The Petition raises a novel issue, namely, whether the President can assent to a Bill after the dissolution of Parliament.

[29] Before addressing the question, we will reproduce the provisions of the Constitution touching on the President's power of assent, relied upon by the parties. Article 62 on Parliament and vesting of legislative authority provides in part that:

62.(1) There is established the Parliament of Zambia which consists of the President and the National Assembly.

(2) The legislative authority of the Republic is vested in and exercised by Parliament.

(3) A person or body, other than Parliament, shall not have power to enact legislation, except as conferred by this Constitution.

[30] Article 63(1) on the functions of Parliament provides that:

63. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President.

Article 66 on presidential assent and referral provides that:

66. (1) Where a Bill is presented to the President for assent, the President shall, within twenty-one days after receipt of the Bill—

(a) assent to the Bill; or

(b) refer the Bill to the National Assembly for reconsideration, indicating any reservation that the President has concerning the Bill.

(2) Where the President refers the Bill to the National Assembly for reconsideration, in accordance with clause (1) (b), the National Assembly may—

(a) amend the Bill taking into account the President's reservation; or

(b) pass the Bill, without amendment, by a vote supported by at least two-thirds of the Members of Parliament.

(3) Where the National Assembly passes the Bill with amendments, in accordance with clause (2) (a), the Speaker shall submit the Bill to the President for assent.

(4) Where the National Assembly passes the Bill, in accordance with clause (2) (b)—

(a) the Speaker shall, within seven days of passing the Bill, resubmit the Bill to the President; and

(b) the President shall, within seven days of receipt of the Bill, assent to the Bill.

(5) Where the National Assembly fails to pass the Bill, in accordance with clause (2) (b), the Bill shall not be presented to the National Assembly in that session.

(6) Where the President does not assent to a Bill within the periods prescribed in clauses (1) and (4), the Bill shall be considered assented to upon the expiry of those periods.

[31] Article 81 on the term and prorogation of Parliament provides in part that:

81 (1) The term of Parliament shall be five years commencing from the date that the Members of Parliament are sworn into office after a general election and ending on the date that Parliament is dissolved.

(8) Where Parliament is dissolved under clauses (3) and (4), the President shall, until the President-elect assumes office, continue to perform the executive functions, in accordance with Article 104.

(10) The President may, due to a state of war, state of public emergency or threatened state of public emergency, after the

dissolution of Parliament and before the holding of general elections, recall the National Assembly that was dissolved.

[32] Article 92 on executive functions of the President provides in part as follows:

92. (1) The President shall perform, with dignity, leadership and integrity, the acts that are necessary and expedient for, or reasonably incidental to, the exercise of the executive authority.

(2) Without limiting the other provisions of this Constitution, the President shall:

(h) sign and promulgate proclamations as specified in this Constitution or as prescribed;

(i) initiate Bills for submission to, and consideration by, the National Assembly; and

(j) perform other functions specified by this Constitution or as prescribed.

[33] Article 104 on transition period before assuming office provides that:

104. (2) Subject to clauses (3) and (4), where the returning Officer declares a presidential candidate as President-elect, the incumbent shall continue to perform the executive functions until the President-elect assumes office, except the power to-

(a) make an appointment; or

(b) dissolve the National Assembly.

Article 274 on the time for performance of a function provides that:

274. A function conferred in this Constitution may be performed as occasion requires.

[34] We now consider the first issue on whether the President can assent to a Bill after dissolution of Parliament. It is not in dispute that the function of enacting legislation requires the conjunctive roles of the National Assembly and the President, who collectively are referred to as Parliament as established by

Article 62. Article 63(1) allocates the roles that each of the two parts of the legislative body are to play by stipulating that Bills are to be passed by the National Assembly and the President is to assent to the Bills. Therefore, when the President assents to Bills in line with Article 66 of the Constitution, he does so as a constituent element of Parliament.

[35] Thus, ordinarily the dissolution of Parliament under Article 81(3) and (4) would mean that the conjunctive role of enacting laws equally comes to an end. However, Article 81 (8) makes it clear that after the dissolution of Parliament, the President continues to carry on his executive functions until a President-elect assumes office. Further, Article 81 (10) provides instances where the President may recall the National Assembly that was dissolved.

[36] As regards the issue of whether the President can assent to a Bill after the dissolution of Parliament, it was argued by the Petitioner that after dissolution, Article 81 (8) limits the President's functions to executive functions thereby excluding the legislative function of assenting to Bills. The terms 'legislative functions' and 'executive function' have been defined in Article 266 as follows:

"executive authority" means the power and the right to execute executive functions;

"executive functions" means the functions of the President set out in this Constitution;

"legislative functions" means the functions of the legislature set out in the Constitution;

These terms are set out in broad expressions. When it comes to the President, the definition of executive functions is broad and does not specifically exclude the issue of assent under Article 66.

[37] Article 81 (8) states that the President is to continue performing executive functions in line with Article 104. Article 104 limits the executive functions by expressly excluding the power to dissolve Parliament and to make appointments.

[38] It is our considered view that Article 66 of the Constitution suggests contemporaneous action on the part of the National Assembly and the President in that the latter is obligated to act within the specified periods of twenty -one (21) days and seven (7) days. The specified timeframes suggest the concomitant nature of the President's role to that of the National Assembly.

[41] The associated nature of the President's assent is further underscored by clause (6) which imputes assent where the President fails to act within the specified period. However, the requirement for attendant action does not necessarily imply that the President can only assent to Bills before dissolution of Parliament.

[39] We say this bearing in mind the obvious hurdle that may arise in situations where the President, as per Article 66(1)(b), opts to refer the Bill back to the National Assembly for reconsideration. In that instance, it will not be possible for the National Assembly to reconsider it where the National Assembly is non-existent following dissolution. This is apparently why the Petitioner has contended that the assent ought to be done during the life of Parliament. The reason being that while after assent, there is no further action required of the National Assembly, in instances where the President refers the Bill back to the National Assembly, further action is required of the house, as per Article 66(2) of the Constitution.

[40] This issue of presidential assent after dissolution of Parliament is not unique to our jurisdiction and we have thus considered the practice in other jurisdictions.

[41] In **La Abra Silver Mining Company v United States**⁴, the Supreme Court of the United States of America considered a question of whether the constitutional power of the President to approve a Bill so as to make it a law is absolutely suspended while Congress is in recess for a fixed period. Article 1, section 7 (2) of the United States Constitution which was the subject of that case reads as follows:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the

President of the United States; if he approves, he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the Objections at large on the Journal, and proceed to consider it. If, after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a Law. But in all such Cases, the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[42] Justice Harlan delivering the opinion of the Court pointed out the fact that since the Constitution did not restrict the President to perform his legislative function to days when congress was in session, the Court could not impose such a restriction. The Court also noted that where a Bill has been presented to the President, ordinarily, no further action is required from Congress unless the Bill has been disapproved and sent to Congress for reconsideration within the prescribed period. Considering all this the Court held that:

The Act of 1892 having been presented to the President while Congress was in recess for a specified time, but within ten days, Sundays excepted, after it was so presented to him, was effectively approved, and immediately became a Law.

The United States Supreme Court reserved its opinion on whether the position would hold if they were dealing with a final adjournment of Congress.

[43] In a later case of **Edwards v United States**⁵, the Supreme Court of the United States interpreting the same provision in relation to a Bill approved after final adjournment of Congress observed as follows:

There is nothing in the words of the Constitution which prohibits the President from approving bills, within the time limited for his action, because Congress has adjourned, and the spirit and purpose of the clause in question forbid the implication of such a restriction.

[44] In both these cases, the Supreme Court underscored the fact that once the President assents to the Bill as opposed to referring it back to Congress for reconsideration, no further action is required of Congress and therefore, its existence has no bearing on the assent which the President can effect post-final adjournment of Congress so long as the assent is done within the prescribed period.

[45] This is the same position that the Australian High Court has taken with respect to Bills signed post prorogation of the two legislative houses. In **Attorney General for Western Australia & Another v Laurence Bernhard Marquet**⁶, the High Court of Australia dealing with an appeal from the Supreme Court of Western Australia questioning the effect of prorogation of Parliament on Bills yet to be assented, upheld the Supreme Court of Western Australia by stating that:

If the Bills had been passed by both houses, there was no proceeding then pending in either House. Each House would have completed its consideration of the Bills. There being no proceedings

pending in the Houses, proroguing the Houses would have had no relevant effect on the Bills. They could lawfully have been presented for and could lawfully have received Royal Assent.

[46] While the Australian High Court was faced with the question of prorogation, we are of the considered view that the considerations it made are quite applicable in cases of dissolution as well. As we have stated above, once the National Assembly passes a Bill for presidential assent, its role on the Bill comes to an end and unless the President refers the Bill back for reconsideration, the National Assembly has no further role to play. It follows that its dissolution cannot therefore affect the validity of the assent.

[47] However, this position is in direct contrast with what obtains in the United Kingdom where royal assent to a Bill can only be granted during the life of the enacting Parliament. This is because as the learned writer of Statutory Interpretation (1999) 2nd Edition observes in section 37, page 127:

Royal assent to an Act requires two stages. Only on completion of the second stage is assent effectively given. First, the Queen's assent must be signified by letters patent under the great seal signed with her Majesty's own hand...Second, that assent must be communicated to Parliament in one of the ways.... (emphasis added)

The United Kingdom's process of assent requires a further stage which presupposes the need for Parliament to be in session and therefore where it is dissolved, royal assent would be incomplete. One scholar, Seth Barrett Tillman, in an article

titled 'Non contemporaneous law making: Can the 110th Senate enact a bill passed by the 109th house?' observed as follows:

In the UK, royal assent to a bill is only granted during the life of the enacting parliament. Once parliament is dissolved by proclamation or expiry of time, its prior legislative acts and votes, including all bills not fully enacted or not having received royal assent, are a legal nullity. Put simply, they die. Law making requires unity in time, in place, and among all actors: Queen, Lords and Commons.

[48] Our holistic reading of the relevant provisions of the Constitution cannot support the two stage position that is obtaining in the United Kingdom but is more inclined to the American and Australian position on this aspect.

[49] The Petitioner in this matter has anchored its' Petition on Articles 62, 63 and 81 of the Constitution and has ignored Article 66 which is the substantive constitutional provision on presidential assent. We wish to state that when interpreting the Constitution, all provisions touching on an issue must be read holistically in order to come to a proper conclusion. We wish to add that, in this matter, the other articles cannot be interpreted in a way that kicks against the clear provisions in Article 66 as regards presidential assent.

[50] A critical point to note is that although Article 63 clothes both the National Assembly and the President with power to enact laws, the National Assembly has overriding enacting power over the President. This is seen from Article 66(2)(b) where a majority of two-thirds of the National Assembly can

pass a Bill notwithstanding the President's request for reconsideration. Article 66(6) also imputes Presidential assent where the President does not assent within the prescribed period. This communicates the power that the National Assembly enjoys in the conjunctive role of enacting legislation. This is because law making or legislating is the core function of the National Assembly which is taken as an expression of the will of the citizenry.

[51] In light of what we have stated above, to restrict the period of assenting to Bills to the life of Parliament and to negate the provisions of Article 66 on the timeframes for assenting to Bills would stand to defeat an express provision of the Constitution. Further, to so hold would be to ignore or make of non-effect Article 66 (6) which imputes assent if the President does not assent to the Bill within the stipulated time. This is assent by operation of law. There is nothing in the reading of Article 66, that the prescribed time stops running or is curtailed on account of dissolution. Had the framers of the Constitution intended that the timeframes for assent in Article 66 should be curtailed when there is dissolution of Parliament, they would have expressly so stated. Consequently, a Bill passed by the National Assembly right before its dissolution is capable of becoming law post dissolution on the strict reading of Article 66. It follows therefore that there is no justification as

to why the President cannot assent to a Bill post-dissolution so long as he is within the prescribed time.

[52] To restrict the running of the time to the life of Parliament would amount to adding restrictions to the Constitution which the framers of the document did not intend as is clear from the holistic reading of Article 66 of the Constitution. The learned authors of Bennion on Statutory Interpretation (1992) 2nd Edition, section 150 discuss the role of interpreters of legislation as follows:

The interpreter is required to determine and apply the legal meaning of the enactment, that is, the meaning that correctly conveys the legislative intention.

[53] Our reading of the relevant provisions reveals that the intention of the framers of the Constitution was only to restrict the period within which the President is to assent to the Bill and where he does not act within the specified period, the Bill would automatically become law. This in our view communicates the high premium that the framers of the Constitution placed on the will of the people represented in the National Assembly.

[54] Thus, when the Zambia Correctional Services Bill No. 35 of 2021 was passed by the National Assembly, it was an expressed intention of the National Assembly, which intention would have become law by virtue of Article 66(6) had the

President not assented to it within the specified period. The only way it could be stopped from becoming law was if the President referred it back to the National Assembly indicating his reservations.

[55] We accordingly hold that the post-dissolution presidential assent to the Zambia Correctional Services Bill No. 35 of 2021 was well within the Constitution and we thus find no merit in the Petition before us. The Petition is accordingly dismissed.

[56] We order each party to bear their own costs.



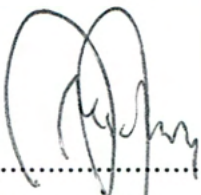
.....
H. CHIBOMBA
PRESIDENT CONSTITUTIONAL COURT



.....
M. S. MULENGA
CONSTITUTIONAL COURT JUDGE



.....
M. M. MUNALULA
CONSTITUTIONAL COURT JUDGE



.....
M. MUSALUKE
CONSTITUTIONAL COURT JUDGE



.....
J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE